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SOUTHERN DISTRICT OF CALIFORNIABY: *q*

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21 **IN THE UNITED STATES DISTRICT COURT**
22 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

23 JESSE MEYER, an individual, on his own
24 behalf and on behalf of all similarly situated,

25 Plaintiff,

26 v.

27 QUALCOMM INCORPORATED, a
28 Delaware corporation,

Defendant.

Civil Action No.

CLASS ACTION COMPLAINT

BY FAX

29 Jesse Meyer ("Plaintiff"), for his complaint, alleges as follows upon information and
30 belief, based upon, *inter alia*, investigation conducted by and through his attorneys, except as to
31 those allegations pertaining to Plaintiff, which are alleged upon knowledge:

NATURE OF THE CLAIM

- 32 1. This is a national class action brought under the Sherman Act and the Cartwright Act on
33 behalf of all persons who (1) purchased one or more cellular devices that either contain
34 the Wideband Code Division Multiple Access ("WCDMA") technology or that are

1 compatible with the Universal Mobile Telecommunications System ("UMTS") standard
2 (the "Device Class") and (2) purchased cellular service from any carrier in the United
3 States which bundles its cellular service with subsidized UMTS-compliant devices (the
4 "Service Class").

5
6 2. This complaint arises from defendant QUALCOMM Incorporated's ("Qualcomm")
7 illegal and anticompetitive conduct in the markets for the technology and chipsets that
8 operate cell phones employing WCDMA, a third generation ("3G") technology that is
9 implemented through the UMTS standard. Qualcomm, by its intentional deception of
10 private standards-determining organizations ("SDOs") has monopolized certain markets
11 for cellular telephone technology and components.

12 3. Qualcomm holds certain patents that it has asserted are "essential" to WCDMA
13 technology and the UMTS standard. Thus, in order to maintain fair competition in the
14 UMTS markets, international and United States SDOs only adopted UMTS as a mobile
15 telephone standard after Qualcomm represented in writing that it would license its
16 patents on fair, reasonable and non-discriminatory terms (that is, so-called "FRAND")
17 terms.

18 4. The adoption of the UMTS standard led mobile telephone services carriers to invest
19 billions of dollars in developing UMTS phone systems, and has led cellular device
20 manufacturers to spend billions of dollars investing in technology compliant with the
21 UMTS standard. After spending so much money to develop UMTS phone systems,
22 cellular telephone services carriers and cellular device manufacturers cannot
23 economically switch to another standard and thus are locked into the UMTS standard.

24 5. After the UMTS standard was adopted, Qualcomm disregarded its FRAND
25 commitments. With the power of its WCDMA patents entrenched in the UMTS
26 standard, Qualcomm has coerced device manufacturers and service carriers who are
27 locked into the UMTS standard into paying supracompetitive prices to license
28 Qualcomm's WCDMA technology.

6. Qualcomm's anticompetitive licensing practices impose enormous costs on UMTS

1 device manufacturers. These costs are passed on to consumers. If the participants in the
 2 UMTS standard-setting process had known that Qualcomm would not license its patents
 3 on FRAND terms, they could have and would have selected a different standard that did
 4 not implicate Qualcomm's patents, resulting in a more competitive market for UMTS
 5 devices and ultimately cheaper UMTS devices for consumers.

- 6 7. Qualcomm's licensing practices violate the Sherman Act (15 U.S.C. §§ 1, 2),
 7 California's Cartwright Act (Cal. Bus. & Prof. Code §§ 16720, 16726), and California's
 8 unfair competition law (Cal. Bus. & Prof. Code § 17200). This lawsuit seeks remedies
 9 for consumers against Qualcomm, including damages (and treble damages under the
 10 Cartwright Act), restitution, and injunctive relief restraining Qualcomm from similar
 11 anticompetitive acts in the future under the Clayton Act (15 U.S.C. §§ 15, 26), the
 12 Cartwright Act (Cal. Bus. & Prof. Code § 16750), and the unfair competition law (Cal.
 13 Bus. & Prof. Code § 17203).

14 PARTIES

- 15 8. Plaintiff Jesse Meyer ("Plaintiff") is a resident of Oakland, California.
 16 9. Plaintiff receives cellular service from AT&T/Cingular and purchased a Motorola Razr
 17 V3xx on June 1, 2007 in an AT&T store for \$121.24. AT&T subsidized the purchase of
 18 his cell phone.
 19 10. Defendant QUALCOMM Incorporated is a Delaware corporation that maintains its
 20 headquarters at 5775 Morehouse Drive, San Diego, California. Qualcomm
 21 commercializes technology involved in cellular communications and applications. The
 22 revenues from Qualcomm's Technology Licensing Segment ("QTL"), which licenses
 23 the patents relevant to this complaint, comprised 27%, 32%, and 35% of total
 24 consolidated revenues in fiscal years 2004, 2005, and 2006, respectively. QTL's
 25 revenues for fiscal year 2006 were \$2.63 billion, and were \$1.84 billion and \$1.33
 26 billion in fiscal years 2005 and 2004, respectively.

27 JURISDICTION AND VENUE

- 28 11. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1331. Plaintiff

1 asserts a claim under the Sherman Act and seeks injunctive remedies under the Clayton
2 Act on behalf of himself and all others similarly situated.

3 12. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d).
4 Defendant is a Delaware corporation headquartered in California. Plaintiff asserts claims
5 on behalf of a proposed class whose members are scattered throughout the fifty states
6 and the U.S. territories. On information and belief, the aggregate of these claims exceed
7 the sum or value of \$5,000,000 and the total number of class members exceeds 100. This
8 Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332(d)(2).

9 13. This Court has personal jurisdiction over Defendant pursuant to Cal. Code Civ. Proc. §
10 410.10 because it maintains its corporate headquarters in, and the majority of the acts
11 alleged herein were committed in, California and, specifically, the Southern District of
12 California. Venue is proper before this Court under 28 U.S.C. § 1391(b) and(c).

13 THE STRUCTURE OF THE WIRELESS INDUSTRY

14 **A. Wireless Carriers, Cell Phone Manufacturers, and Chipset Manufacturers**

15 14. Wireless carriers provide cell phone service to consumers. Carriers operate wireless
16 systems that enable consumers to place and receive telephone calls, and send and receive
17 data, on cell phones.

18 15. Many companies around the world manufacture cell phones, and the manufacturers
19 typically sell those phones to carriers, which in turn arrange for sale of the phones to
20 consumers.

21 16. Cell phones contain, among other components, one or more computer chipsets that
22 deliver the cell phones' core ability to communicate with the wireless system.

23 **B. The Role of Standards Development Organizations**

24 17. For a carrier's wireless system to function properly, all of the system's components (e.g.,
25 base stations in various geographic locations and consumers' cell phones) must
26 seamlessly interface with each other. This means that regardless of which manufacturer
27 makes a cell phone, regardless of which chipset manufacturer supplies the components
28 for the cell phone, and regardless of which company manufactures the system's

1 components, each cell phone must be capable of interfacing with all of the other
2 components in a carrier's wireless system.

3 18. Because of this demand for interoperability, several SDOs have worked with the
4 wireless industry to develop wireless communications standards.

5 19. On a worldwide basis, the International Telecommunications Union ("ITU") is the
6 central telecommunications SDO. The ITU is an international organization comprised of
7 governments and firms in the private sector, which coordinates the operation of
8 telecommunications systems and services and advances the development of
9 communications technology. The ITU's standardization activities are designed to foster
10 the growth of new technologies, such as mobile telephony and the Internet, as well as the
11 emerging global information infrastructure which handles a mix of voice, data and
12 multimedia signals. The ITU develops internationally agreed technical and operating
13 standards to foster interconnection of the world's communications systems.

14 20. The Telecommunications Industry Association ("TIA") is the leading U.S.-based SDO
15 for the communications and information technology industry. The TIA is comprised of
16 member companies that manufacture or supply products and services used in global
17 communications. The European Telecommunications Standards Institution ("ETSI") is
18 an SDO based in France with a leadership role in Europe. The Alliance of
19 Telecommunications Industry Solutions ("ATIS") is an SDO based in the United States.

20 21. In the past several years, standards bodies specific to wireless technology standards have
21 developed. The Third Generation Partnership Project ("3GPP") has focused on the
22 evolution of GSM and UMTS technology.

23 22. The ownership of relevant intellectual property ("IP") and related IP licensing practices
24 are critical issues in SDOs' consideration of standards proposals. If the implementation
25 of a standard requires the use of particular IP, such as a patent, the IP owner may have
26 the ability to prevent, delay or distort the development of technology implementing that
27 standard (sometimes referred to as "patent hold-up") and thereby undermine the purpose
28 of the SDO. Accordingly, SDOs typically require that their members declare whether

1 they believe they hold patents necessary for compliance with a particular standard, and if
2 so whether they are willing to license such patents on fair, reasonable, and non-
3 discriminatory ("FRAND") terms. Patents necessary to implement a particular standard
4 are known as "essential patents" for the standard to which they relate. Each SDO
5 relevant to this action requires that owners of essential patents agree to FRAND
6 licensing before the SDO will agree to include the technology that depends upon those
7 patents in any industry standard.

8 **C. Cellular Standards**

- 9 23. Two technology paths, or families of standards, are in widespread use today: "CDMA,"
10 which stands for "code division multiple access;" and "GSM," which stands for "global
11 system for mobility." Among major cellular service providers in the US, Verizon
12 Wireless and Sprint Communications operate CDMA-path networks, and Cingular (now
13 AT&T) and T-Mobile operate GSM-path networks.
- 14 24. The CDMA and GSM paths have evolved through four generations, which reflect the
15 evolution and improvement of these technologies over time. This complaint refers to the
16 first generation as "1G," the second generation as "2G," and so on. The 1G standard
17 used in the United States is the Advanced Mobile Phone System ("AMPS"). Cellular
18 carriers are required to provide AMPS service until early 2008. See Public Mobile
19 Services and Personal Communications Services, 67 Fed. Reg. 77,175 (Dec. 17, 2002)
20 (codified at 47 C.F.R. 22.901(b)).
- 21 25. 2G standards reflect the advent of digital technology and the replacement of analog
22 standards. The two primary 2G standards are 1) Code Division Multiple Access
23 ("CDMA") and 2) Global System for Mobile communications ("GSM"). By 2000,
24 essentially all cellular devices on the market employed either the GSM 2G standard or
25 the CDMA 2G standard.
- 26 26. Carriers are in the process of deploying newer technologies that cannot be neatly
27 characterized as either 2G or 3G, and may be called 2.5G or 2.75G. On the GSM branch,
28 GSM carriers have implemented the GPRS and EDGE standards, which offer

respectively faster data speeds. Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eleventh Report, 21 FCC Rcd 10947, ¶ 107 (Sept. 26, 2006) ("Eleventh Report"). Likewise, on the CDMA branch, CDMA carriers have deployed the CDMA2000 and the EVDO standards, again offering respectively faster data speeds. Id., ¶ 108.

27. 3G standards evolved from the specifications defined in the International Mobile Telecommunications-2000 standard ("IMT-2000"). 3G standards support greater concentrations of voice and data subscribers and higher data rates at lower incremental cost than 2G standards. The two 3G standards most widely slated for implementation in the United States are UMTS (operating on the GSM branch) and 3G CDMA (operating on the CDMA branch). UMTS allows substantially faster data transfer speeds than the GPRS or EDGE standards. Id., ¶ 107.

28. Thus, the evolution of cellular standards is as follows:

<u>GENERATION</u>	<u>GSM Path</u>	<u>CDMA Path</u>
3g	UMTS	CDMA 2000/3G CDMA
2.5g/2.75g	GPRS/EDGE	CDMA 2000/EVDO
2g	GSM	CDMA
1g	Advanced Mobile Phone System	

29. Contemporary cell phones primarily use 2G and 3G standards. Other standards built on top of the UMTS standard will allow still faster download speeds – for instance, High Speed Data Packet Access ("HSDPA") technology may double the download speeds of UMTS. Id.
30. The CDMA and GSM technology paths are not interoperable; equipment and technologies used in one cannot be used in the other. For this reason, each technology path has its own standard or set of standards.
31. The UMTS standard was created by the ETSI and its SDO counterparts in the United States and elsewhere after a lengthy evaluation of available alternative equipment and technologies. The UMTS standard was designed to permit economical transition from

1 2G GSM-based systems to a 3G standard; UMTS therefore works with WCDMA and is
2 reverse-compatible with GPRS/EDGE operating systems and GSM operating systems.

- 3 32. An industry-wide standard necessarily eliminates previously available alternative
4 technologies, which can no longer be used and are no longer competitive. The adoption
5 of an industry-wide standard, therefore, confers monopoly power on the holders of
6 patents essential to implementing that standard.

7
8 **SUBSTANTIVE ALLEGATIONS**

- 9 33. Qualcomm supplies some of the essential technology that the ETSI ultimately included
10 in the UMTS standard, and holds intellectual property rights ("IPRs"), such as patents,
11 in this technology.

- 12 34. Given the potential for owners of IPRs, through the exercise of their rights, to exert
13 undue control over the implementation of industry-wide standards, the ETSI requires a
14 commitment from vendors whose technologies are included in standards to license their
15 technologies on FRAND terms. Neither ETSI nor the other relevant SDOs further define
16 FRAND.

- 17 35. The ETSI included Qualcomm's proprietary technology in the UMTS standard only
18 after, and in reliance on, Qualcomm's commitment to license UMTS technology on
19 FRAND terms. Qualcomm's "essential" technology is called wideband CDMA
20 ("WCDMA," which is a GSM-compatible technology and should not be confused with
21 the CDMA technology path).

- 22 36. Qualcomm's WCDMA patents are essential to the manufacture of UMTS-compliant cell
23 phones and other UMTS-compliant devices, and are also essential for the
24 implementation of the UMTS standard. The licensing of Qualcomm's patents therefore
25 is a barrier to entry into the relevant product market. Certainly, Qualcomm takes that
26 position and is heavily engaged in patent litigation to that effect. One of Qualcomm's
27 recent 10-Ks states: "[O]ur intellectual property rights include a valuable patent portfolio
28 that includes *patents essential to implementation of each of the 3G CDMA alternative*
standards . . ." QUALCOMM Incorporated, *Form 10-K For the Fiscal Year Ended*

1 September 24, 2006, at 10-11 (emphasis added). “[A]t this time most, if not all,
2 companies recognize that any company seeking to develop, manufacture and/or sell
3 products that use CDMA technologies [including WCDMA] will require a patent license
4 from us.” *Id.* at 23-24.

5 37. **Transition to 3G Is Path-Dependent.** The CDMA and GSM standards are mutually
6 incompatible: CDMA phones cannot be used with GSM carriers, and vice versa.
7 Moreover, technologies built on top of the GSM standard are not compatible with
8 technologies built on top of the CDMA standard.

9 38. Consequently, the transition from 2G to 3G is path-dependent: it is immensely cheaper
10 for carriers to upgrade from CMDA to 3G CDMA and from GSM to WCDMA than it is
11 to switch from CDMA to WCDMA or from GSM to CDMA2000. By making the
12 transition to the next generation of the technology that a carrier has already selected –
13 whether CDMA or GSM for 2G services — the carrier can avoid the generally
14 insurmountable expense entailed in switching between technologies.

15 39. In Qualcomm’s own words, “the CDMA2000 mode enables a direct and more
16 economical conversion for current cdmaOne networks. . . . [The WCDMA]
17 infrastructure network has been specifically designed to be compatible with the GSM
18 network, which is why it is expected that most GSM operators will migrate to WCDMA
19 rather than to CDMA2000.” *Id.* at 10.

20 40. **Lock-in Effect.** Due to the high cost of switching between the two major technology
21 paths, carriers (and cellular device manufacturers) face a substantial “lock-in” effect
22 after implementation of the UMTS standard. Qualcomm’s technology is not
23 interchangeable with or substitutable for other technologies.

24 41. **SDOs and Commitments to FRAND Licensing.** To guard against anticompetitive
25 patent hold-up, most SDOs (including all SDOs relevant to this Action) require firms
26 supplying essential technologies for inclusion in a prospective standard to commit to
27 licensing their technologies on FRAND terms. The absence of irrevocable FRAND
28 assurances may cause an SDO to withhold approval of standards known to incorporate

1 essential, proprietary technologies. The FRAND commitments, or lack thereof, are
2 therefore key indicators of the cost of implementing a potential technology. In this case,
3 due to the "lock in" effect associated with a carrier's choice operating standard, industry
4 participants' mutual representation and commitment to license any intellectual property
5 applicable to the UMTS standard on FRAND terms was an essential part of the
6 formulation and adoption of the UMTS standard.

7
8 42. **Qualcomm's Representations of FRAND Licensing to SDOs.** Upon information and
9 belief, Qualcomm made repeated and express written representations to SDOs, including
10 the ITU, ETSI, and 3GPP, that Qualcomm would license any of its essential WCDMA
11 patents on FRAND terms prior to the adoption of the UMTS standard. Essentially,
12 Qualcomm monopolized markets for WCDMA technology by inducing the relevant
13 SDOs to include Qualcomm's patented technology as an essential element of the UMTS
14 standard. On information and belief, Qualcomm made these representations from its
15 headquarters, located in California.

16 43. Qualcomm's WCDMA technology was incorporated into the UMTS standard only after,
17 and in reliance on, Qualcomm's commitment to license the patents for the WCDMA
18 technology on FRAND terms. The selection of Qualcomm's technology excluded other
19 patent holders competing to have their patents incorporated into the standard which
20 would have licensed their patents on FRAND terms. However, even if Qualcomm's
21 WCDMA technology was the only candidate for inclusion in the UMTS standard, it still
22 would not have been selected by the relevant SDOs absent a FRAND commitment. This
23 is because each SDO relevant to this action requires that owners of essential patents
24 agree to FRAND licensing terms before the SDO will agree to include the technology
25 that depends upon those patents in any industry standard.

26 44. Qualcomm's false commitments to license its patents on FRAND terms were intended
27 to, and did, cause the SDOs to adopt the UMTS standard. Qualcomm's
28 misrepresentations conferred an unfair advantage and bias in the competitive process in
favor of WCDMA's inclusion in the UMTS standard. By distorting choices through

1 deception, Qualcomm obscured the relative merits of alternatives and prevented an
2 efficient selection process. Qualcomm also obscured the costs of including its
3 proprietary technology in the standard. Qualcomm has taken advantage of industry
4 participants who now are locked into the UMTS standard by violating its FRAND
5 commitments, thus extracting supracompetitive royalties for the licensing of its
6 WCDMA patents.

7 **QUALCOMM'S UMTS LICENSING PRACTICES ARE ANTICOMPETITIVE**

- 8 45. Qualcomm never intended to offer its patent portfolio on FRAND terms. Qualcomm's
9 commitment to FRAND licensing to the relevant SDOs was intentionally false.
- 10 46. After the widespread adoption of the UMTS standard, Qualcomm reneged on its
11 FRAND commitments to the ETSI and other SDOs as alleged in more detail below.
12 Qualcomm's licensing of the UMTS patents ("UMTS Licensing Practices" or "UMTS
13 Licensing") have not been fair or reasonable, nor have they been non-discriminatory.
- 14 47. Qualcomm has used its monopoly power in the WCDMA market, as well as its false
15 commitment to license its WCDMA patents of FRAND terms, to force industry
16 participants into accepting Qualcomm's UMTS Licensing Practices. Qualcomm has
17 unnaturally prolonged high prices for UMTS chipsets and UMTS devices, and has
18 significantly deterred non-price competition (improved products and functionality).
19 Consequently, prices for UMTS chipsets are supracompetitive, and innovation in, e.g.,
20 enhanced functionality has been undermined.
- 21 48. Qualcomm's Acquisition of Market Power. As any other patentee, Qualcomm exercises
22 exclusive control over the market for its WCDMA-related patents. Qualcomm derives its
23 market power in the UMTS market from the incorporation of WCDMA-related patents
24 into the UMTS standard and the widespread adoption of that standard. Qualcomm's
25 deceptive conduct, in the context of a consensus-driven private standard-setting
26 environment, harmed (and continues to harm) competition and provides Qualcomm with
27 monopoly power over the UMTS chipset market.
- 28 49. Qualcomm communicates with its licensees and potential licensees, and its UMTS

Licensing Practices emanate, from its headquarters in California. Qualcomm's UMTS Licensing Practices include, but are not limited to, the following:

50. **Discrimination Against Non-Qualcomm UMTS Chipsets via WCDMA Patent**

Royalty Rates. On information and belief, UMTS Licensing requires cellular manufacturers to pay multi-million dollar fees, which may be waived, but only on a discriminatory basis – for example, if cell phone manufacturers agree to purchase Qualcomm's UMTS chipsets exclusively. No legitimate relationship exists between licensing of cell phone technology and the purchase of chipsets.

51. Qualcomm's royalty rate discrimination furthers no legitimate competitive interest or business need. Rather, Qualcomm's royalty rate discrimination is intended to harm, and has the effect of harming, competition in the UMTS chipset market.

52. **Discrimination Against Non-Qualcomm UMTS Chipsets via WCDMA Patent**

Royalty Calculations: Price Netting. Qualcomm's UMTS Licensing also discriminates through a form of tying products together, called "price netting." The royalty paid under UMTS Licensing is based on the end-user price for the entire UMTS device, if the cell phone uses a chipset made by a competitor of Qualcomm. However, if licensees use a Qualcomm chipset, they may deduct (or "net out") the price paid to Qualcomm for the Qualcomm chipset from the end-user price of the UMTS device before calculating the royalty. "Price-netting" explicitly ties the patent royalty (fees paid on a license for Qualcomm's WCDMA patents) to UMTS chipsets manufactured by Qualcomm. "Price-netting" does not further any legitimate business interest, but rather is intended to harm competition. This UMTS Licensing Practice ensures that every non-Qualcomm UMTS chipset purchased by a device manufacturer carries a hefty financial penalty.

53. UMTS Licensing's discrimination against non-Qualcomm UMTS chipsets does not reflect any legitimate competitive interest or business need, but is intended to and does harm competition in the UMTS chipset market.

54. Qualcomm executives have publicly confirmed that UMTS Licensing involves price discrimination. Qualcomm's President, Steve Altman, stated in the earnings call for

1 Qualcomm's 2005 fourth quarter: "We have provided a small discount for using our
2 chips to companies currently selling WCDMA handsets in Europe, which we believe to
3 be nothing more than legitimate and lawful price examination [sic]." *Full Transcript of*
4 *Qualcomm's 4Q05 Conference Call — Prepared Remarks (QCOM)*, at
5 [http://seekingalpha.com/article/4317-full-transcript-of-qualcomms-4q05-conference-](http://seekingalpha.com/article/4317-full-transcript-of-qualcomms-4q05-conference-call-prepared-remarks-qcom)
6 [call-prepared-remarks-qcom](http://seekingalpha.com/article/4317-full-transcript-of-qualcomms-4q05-conference-call-prepared-remarks-qcom) (November 16, 2005).

7 **55. UMTS Licensing Requires Unfair and Discriminatory Double Royalty Payments.**

8 Upon information and belief, Qualcomm requires licenses from both chipset
9 manufacturers and cell phone manufacturers. This UMTS Licensing Practice requires
10 that cellular device manufacturers pay a royalty rate based on the sales price of each
11 UMTS cell phone sold: chipset manufacturers cannot sell UMTS chipsets to cell phone
12 manufacturers without a Qualcomm license, and UMTS device manufacturers cannot
13 buy UMTS chipsets from manufacturers without a Qualcomm license. Further, device
14 manufacturers pay the same royalty regardless of whether they purchased the UMTS
15 chipset or manufactured it themselves – although (as alleged above) manufacturers do
16 receive a discount if they purchase the chipsets directly from Qualcomm. Hence,
17 Qualcomm's royalty scheme enables it to collect royalties at two levels of the UMTS
18 device market.

19 **56.** By requiring an individual license from each chipset supplier and UMTS device
20 manufacturer, Qualcomm has also gained control over the interactions between suppliers
21 and manufacturers, which is used to discriminate between customers depending on
22 whether they use Qualcomm or non-Qualcomm chipsets.

23 **57.** On information and belief, Qualcomm has threatened UMTS device manufacturers with
24 termination of their licenses and patent and/or breach of contract litigation if they
25 purchase UMTS chipsets from any company that does not have its own license from
26 Qualcomm. Qualcomm has made these threats notwithstanding its knowledge that at
27 least some of those cell phone manufacturers have paid a royalty on UMTS chipsets and
28 are licensed to sell UMTS cell phones incorporating UMTS chipsets. None of the other

1 patent owners with patents essential to the UMTS standard require this double royalty.
2 This double royalty violates Qualcomm's FRAND obligations, not only because it is
3 unfair and unreasonable, but also because it imposes different effective royalty rates (for
4 the same bundle of rights) on UMTS device manufacturers that use third party UMTS
5 chipsets than on those that use self-manufactured chipsets. This exacerbates the effect of
6 UMTS Licensing's discrimination against manufacturers that use non-Qualcomm
7 UMTS chipsets and increases costs to consumers.

8
9 **58. UMTS Licensing Extends Royalty Payments to Unpatented Components of UMTS**
10 **Chipsets.** Upon information and belief, UMTS Licensing requires royalty payments on
11 certain components of a UMTS chipset that are not covered by Qualcomm's WCDMA
12 patents. This UMTS Licensing Practice discriminates against other UMTS chipset
13 manufacturers who may seek to improve and enhance the functionality of their UMTS
14 chipsets. This UMTS Licensing Practice is unreasonable, unfair, and anticompetitive,
15 because it dampens the economic incentives of UMTS licensees to improve and add
16 functionality to UMTS chipsets.

17 **59. UMTS Licensing Requires Unreasonable Royalty Demands Contrary to FRAND**
18 **Commitments.** The royalty rates charged by Qualcomm to UMTS chipset
19 manufacturers for Qualcomm's WCDMA technology are far greater than the rates
20 charged by any other company proclaiming to be an essential WCDMA patent holder.

21 **60.** In addition, Qualcomm publicly represents that it charges the same royalty rate for
22 licensing its WCDMA patents as it does for its 3G CDMA patents, even though its
23 patents cover a much smaller proportion of the UMTS standard than the 3G CDMA
24 standard. Thus, *Qualcomm's patents add far less value to the 3G UMTS standard than*
25 *to the 3G CDMA standard, though Qualcomm charges the same license rate for both.*
26 This UMTS Licensing Practice lessens competition in the UMTS market and encourages
27 competition in the 3G CDMA market. Using this UMTS Licensing Practice as leverage,
28 Qualcomm has increased its market power over the entire market for 3G cellular
devices.

1 61. Steve Altman stated at Qualcomm's May 5, 2005 Spring Analyst Meeting that
2 Qualcomm's licensees are obliged to pay the same royalty rates regardless of whether
3 any of its patents expire and regardless of the number or percentage of WCDMA
4 essential patents held, provided that at least "one claim of one patent applies."

5 Qualcomm's 2006 10-K states:

6
7 Generally, we have licensed substantially all of our patents to our CDMA
8 licensees. Under each of our existing license agreements covering multiple
9 CDMA standards, the royalty rate paid to us for sales of licensed 3G CDMA
(regardless of whether it is CDMA2000, WCDMA, TD-CDMA or TD-SCDMA)
subscriber products *is no less than the rate that such licensee pays for its licensed
second generation cdmaOne [2G CDMA] subscriber products.*

10 QUALCOMM Incorporated, *Form 10-K For the Fiscal Year Ended September 24,*
11 *2006*, at 10-11 (emphasis added).

12 62. Similarly, Qualcomm has rejected attempts by other WCDMA essential patent holders
13 to set up a government-or-SDO-approved ceiling on the royalty rate at which all
14 WCDMA technology for cell phones would be licensed in order to encourage adoption
15 and proliferation of the technology.

16 63. **UMTS Licensing Requires Unfair Grant-back Provisions.** Upon information and
17 belief, Qualcomm demands that UMTS licensees grant back to Qualcomm licenses for
18 their own patents on terms much more favorable to Qualcomm. This UMTS Licensing
19 Practice requires UMTS licensees to provide to Qualcomm substantially broader
20 licenses for their own patents than what Qualcomm grants to the UMTS licensees. This
21 UMTS Licensing Practice violates Qualcomm's FRAND commitments because the
22 grant-back provisions are not reciprocal, but are overly broad. Qualcomm's insistence on
23 an asymmetrical grant-back has the additional anticompetitive effect of discouraging
24 innovation by Qualcomm's licensee-competitors and thus, undermines competition for
25 UMTS chipsets and technology. This UMTS Licensing Practice is anticompetitive,
26 because it creates an imbalance of power between Qualcomm and its competitors that
27 threatens to seriously hamper those competitors over the long-term. It is also
28 discriminatory in that it affects licensees with extensive relevant patent portfolios more

1 than it affects those without such a portfolio.

2 64. **Pricing Data Exchange Under UMTS Licensing Is Anticompetitive.** Upon

3 information and belief, UMTS Licensing requires UMTS chipset licensees to provide to
4 Qualcomm sensitive sales and pricing information, even when those licensees are
5 competing directly with Qualcomm. This UMTS Licensing Practice discourages price
6 competition and lacks any legitimate business justification. The effect is to prevent
7 competition to the detriment of consumers.

8 65. **Qualcomm Offers Incentives to Device Manufacturers to Foreclose Competition in
9 the UMTS Chipset Market.** Upon information and belief, Qualcomm provides

10 discounts, marketing incentives, payments and/or other rewards to cell phone
11 manufacturers who use Qualcomm UMTS chipsets exclusively. These inducements
12 undermine competition from other UMTS chipset manufacturers by increasing the costs
13 of firms who seek to sell UMTS chipsets to device manufacturers relative to
14 Qualcomm's costs, and by defeating competition that would expand UMTS chipset
15 output, improve quality and reduce the price of UMTS cell phones. These inducements
16 may amount to tens of millions of dollars per cell phone manufacturer licensee.

17 66. **UMTS Licensing Harms Competition.** Collectively and individually, Qualcomm's
18 UMTS Licensing Practices have restrained, eliminated, curbed, and reduced competition
19 and undermined innovation in the UMTS chipset market, as well as the market for
20 UMTS-capable devices. Competition could accelerate the decline in prices in the UMTS
21 device market and facilitate other non-price competition, including advances in
22 functionality and quality. Qualcomm intended to restrain competition when it
23 implemented the UMTS Licensing Practices, to protect itself from competition on the
24 merits.

25 67. The anticompetitive impact of UMTS Licensing can be inferred from Qualcomm's own
26 statements. For instance, out of 36 HSDPA-capable devices on the market, only two use
27 non-Qualcomm chipsets. Qualcomm, *QUALCOMM Press Conference*, at 18 (Feb. 12,
28 2007), at http://www.qualcomm.com/press/PDF/3gsm07_pressbriefing.pdf. Qualcomm

1 provides manufacturers with the chipset for all 41 laptops with HSDPA-embedded
 2 chipsets. *Id.* at 19. Qualcomm has over 80 UMTS vendor licensees. *Id.* at 20. Indeed,
 3 revenue from UMTS Licensing composes more and more of Qualcomm's overall
 4 income: Qualcomm estimates that "the ratio of WCDMA reported royalties to total
 5 reported royalties was 49% [in fiscal year 2006], up from 41% reported in [fiscal year
 6 2004]." QUALCOMM Incorporated, *Form 10-K For the Fiscal Year Ended September*
 7 *24, 2006*, at 45.

8 THE RELEVANT PRODUCT MARKETS

9
 10 68. **Device Market.** The relevant product market ("Device Market") is the global market for
 11 UMTS-capable devices.

12 69. Plaintiff is an end consumer in the UMTS device market: Plaintiff purchased a Motorola
 13 Razr V3xx on June 1, 2007.

14 70. Plaintiff has suffered harm from Qualcomm's anticompetitive UMTS Licensing
 15 Practices. Both UMTS chipset and UMTS device manufacturers suffer direct
 16 anticompetitive harm from Qualcomm's UMTS Licensing Practices. This
 17 anticompetitive harm includes supracompetitive prices and impaired non-price
 18 competition in innovation of UMTS functionality. Because the entire UMTS chipset and
 19 device industries are uniformly subject to the effects of UMTS Licensing, no individual
 20 competitor in those markets has any economic incentive to absorb these costs. Instead,
 21 UMTS chipset manufacturers pass UMTS Licensing costs down to UMTS device
 22 manufacturers, UMTS device manufacturers pass those costs down to their vendors, and
 23 the vendors ultimately pass those costs on to end consumers, such as Plaintiff.

24 71. Since the inception of cellular service in the United States, cellular carriers have
 25 competed not only through their cellular service, but have also bundled their services
 26 with cellular devices compatible with (and necessary to use) that cellular service.
 27 Carriers have subsidized the cost of these bundled devices for over fifteen years.

28 72. Despite these subsidies, end consumers who purchase their devices through cellular
 carriers pay more for UMTS devices than they would in the absence of the

1 anticompetitive effects of Qualcomm's UMTS Licensing. Indeed, the carriers' ability to
 2 offer subsidies on UMTS devices is curtailed and limited by those same anticompetitive
 3 effects. Further, end consumers pay sales tax on the entire cost of the device –
 4 notwithstanding the carriers' subsidy. UMTS devices are no longer a niche market, but
 5 now constitute a burgeoning new consumer technology, and are well on their way to
 6 becoming the next ubiquitous consumer standard in cellular technology. Qualcomm
 7 executives estimated in a 2006 earnings conference call that approximately 96 million
 8 WCDMA units shipped in 2006, up from 50 million units in 2005. *QUALCOMM Inc.*
 9 *F2Q06 (Quarter ending Mar 26, 2006) Earnings Conference Call Transcript (QCOM)*,
 10 at [http://seekingalpha.com/article/9210-qualcomm-inc-f2q06-quarter-ending-](http://seekingalpha.com/article/9210-qualcomm-inc-f2q06-quarter-ending-mar-26-2006-earnings-conference-call-transcript-qcom)
 11 [mar-26-2006-earnings-conference-call-transcript-qcom](http://seekingalpha.com/article/9210-qualcomm-inc-f2q06-quarter-ending-mar-26-2006-earnings-conference-call-transcript-qcom) (Apr. 20, 2006). Qualcomm's
 12 recent estimate for UMTS sales in 2007 is 180 million units. *QUALCOMM F3Q07 (Qtr*
 13 *End 6/30/07) Earnings Call Transcript*, at [http://seekingalpha.com/article/42372-](http://seekingalpha.com/article/42372-qualcomm-f3q07-qtr-end-6-30-07-earnings-call-transcript)
 14 [qualcomm-f3q07-qtr-end-6-30-07-earnings-call-transcript](http://seekingalpha.com/article/42372-qualcomm-f3q07-qtr-end-6-30-07-earnings-call-transcript) (July 20, 2007).

15 73. **Alternative Device Market.** Qualcomm has leveraged its market power over UMTS
 16 devices and chipsets to increase its market power over the entire market for cellular
 17 devices using any 3G standard.

18 74. Qualcomm exercises exclusive control over the patents needed to use the 3G CDMA
 19 standard, and derives significant market power over the market for 3G CDMA devices
 20 from those patents. Qualcomm substantially controls the patent portfolio needed to
 21 manufacture 3G CDMA devices.

22 75. The market for 3G CDMA-related patents is significant because of the adoption of the
 23 3G CDMA standard by, among others, Verizon Wireless and Sprint Communications.
 24 Qualcomm therefore derives significant market power from its 3G CDMA patents.

25 76. The UMTS Licensing Practices undermine competition between UMTS device and
 26 chipset manufacturers and the manufacturers of 3G CDMA devices and chipsets.
 27 Through the UMTS Licensing Practices, Qualcomm imposes an anticompetitive penalty
 28 on competitors seeking to manufacture UMTS devices and chipsets. Qualcomm uses its

1 market power over the IPRs necessary to use the 3G CDMA standard to eliminate, limit,
2 or mitigate this penalty for manufacturers of 3G CDMA devices and chipsets.

3 Consequently, the UMTS Licensing Practices make 3G CDMA device and chipsets a
4 more attractive market than UMTS devices and chipsets, while deterring investment in
5 the UMTS standard.

6 77. Because UMTS and 3G CDMA are the only standards that current 3G chipset and
7 device manufacturers can use, the UMTS Licensing Practices can reasonably be
8 expected to drive chipset and device manufacturers from investing and competing in the
9 UMTS standard to investing and competing in the 3G CDMA standard. The 3G CDMA
10 standard benefits from the network effects of increased investment, making it more
11 attractive relative to the UMTS standard (or any other possible alternative cellular
12 standard). Because there are relatively fewer IPR owners with an interest in the 3G
13 CDMA standard, additional investments in the 3G CDMA standard and additional
14 competition in the market for 3G CDMA devices increases Qualcomm's market power
15 over the entire 3G cellular device market.

16 78. Qualcomm uses its market power over UMTS devices and chipsets to increase its market
17 power over the entire 3G cellular device market by deterring investment in the UMTS
18 standard (or any other possible alternative standard to the 3G CDMA standard) and
19 driving investment into the 3G CDMA standard. Qualcomm's leveraging of its market
20 power comes at the expense of competition in the market for UMTS devices and
21 chipsets: the UMTS Licensing Practices have the effect of prolonging high prices for
22 and undermining innovation in UMTS chipsets and UMTS devices.

23 79. In addition and/or in the alternative to the Device Market, the relevant product market is
24 the global market for 3G cellular devices ("Alternate Device Market").

25 **THE RELEVANT SERVICE MARKET**

26 80. The subsidies that cellular carriers provide to their subscribers are not costless, and some
27 portion of the carriers' cellular service fees is attributable to these subsidies. In effect,
28 the carriers distribute the cost of these subsidies to each and every one of their

1 subscribers (regardless of whether these subscribers used or purchased a subsidized
2 cellular device).

3 81. Some portion of carriers' costs of subsidizing the purchase of UMTS-compliant devices
4 is attributable to Qualcomm's anticompetitive conduct. Carriers pay supracompetitive
5 prices to purchase UMTS devices that can be sold to their cellular service customers at
6 subsidized prices. These supracompetitive fees are passed on to the carriers' consumers.

7 82. On information and belief, however, the supracompetitive fees attributable to
8 Qualcomm's anticompetitive conduct are not distinctly allocated to the price of the
9 UMTS devices sold through the carriers to their cellular subscribers. Rather, these
10 supracompetitive fees are effectively distributed through carriers' service fees to all their
11 customers. Plaintiff and the other cellular service subscribers have paid higher prices for
12 their cellular service because of Qualcomm's anticompetitive conduct.

13 83. Plaintiff does not seek to determine whether cellular carriers' rates are reasonable, but
14 rather to eliminate and redress the anticompetitive impact of Qualcomm's conduct –
15 which impact may be measured, in part, by cellular carriers' fees.

16 84. The relevant service market ("Service Market") is the cellular service of every carrier
17 which bundles its cellular service with subsidized UMTS-compliant devices in the
18 United States.

19 **CLASS CERTIFICATION ALLEGATIONS**

20 85. Plaintiff seeks certification of a Device Class and a Service Class. The Device Class
21 seeks injunctive relief under federal and state antitrust laws, and money damages
22 (including treble damages under the Cartwright Act (Cal. Bus. & Prof. Code § 16750))
23 for persons who purchased a UMTS-capable cellular device. The Service Class seeks
24 injunctive relief under federal and state antitrust laws, and money damages (including
25 treble damages under the Cartwright Act (Cal. Bus. & Prof. Code § 16750)) for persons
26 who purchased cellular service from a carrier that bundled its cellular services with
27 subsidized UMTS-capable devices.

28 86. Plaintiff seeks certification under Rule 23(a), Rule 23(b)(2) and Rule 23(b)(3).

Allegations for Certification of Device Class Pursuant to Rule 23(a)

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87. **Definition of the Device Class.** Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this Complaint against Defendant on behalf of himself and all persons who purchased a UMTS-capable cellular device (the "Device Class"). Excluded from the Device Class are Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents has a controlling interest and their current or former employees, officers and directors; and 3) the legal representatives, successors or assigns of any such excluded persons.
88. **Device Class Numerosity.** Joinder of all Device Class members is impracticable. Qualcomm itself estimates some 326 million UMTS devices were sold globally in the last three years. Qualcomm estimates that UMTS-based phone sales represented approximately 41% of all manufacturer handset sales in Western Europe during the period from April 2006 through June 2006. *QUALCOMM Incorporated, Form 10-K For the Fiscal Year Ended September 24, 2006*, at 45. There were an estimated 2.3 million 3G cellular handsets and more than 2.3 million HSDPA-capable PC cards in service in the United States at the end of 2005. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eleventh Report*, 21 FCC Rcd 10947, ¶ 165 (Sept. 26, 2006) ("*Eleventh Report*").
89. **Device Class Commonality.** Common questions of fact and law exist as to all Device Class members and predominate over the questions affecting only individual Class members. These common questions include:
- (a) Whether Qualcomm's patents are essential to manufacturing UMTS chipsets or UMTS devices;
 - (b) Whether Qualcomm has represented its patents are essential to manufacturing UMTS chipsets or UMTS devices to relevant manufacturers, and said manufacturers have relied on those representations;
 - (c) Whether Qualcomm represented or committed that it would license its patents on FRAND terms to SDO participants involved in the selection and formulation of the UMTS standard;

- (d) Whether Qualcomm intentionally misrepresented that it would license its patents on FRAND terms to SDO participants involved in the selection and formulation of the UMTS standard;
- (e) Whether Qualcomm has committed the UMTS Licensing Practices alleged above;
- (f) Whether the UMTS Licensing Practices alleged above are fair, reasonable and non-discriminatory;
- (g) Whether Qualcomm reneged on its commitments to license its UMTS patents on FRAND terms;
- (h) Whether the UMTS Licensing Practices have anticompetitive effects, including supracompetitive pricing and impair non-price competition in the form of deterred innovation;
- (i) Whether Qualcomm's UMTS Licensing Practices violate the Section 1 of the Sherman Act;
- (j) Whether Qualcomm's UMTS Licensing Practices violate the Section 2 of the Sherman Act;
- (k) Whether the UMTS Licensing Practices' anticompetitive effects are passed on to end consumers of UMTS devices;
- (l) What portion of end-user prices for UMTS devices are attributable to Qualcomm's anticompetitive conduct alleged herein;
- (m) Whether UMTS Licensing creates a trust in violation of the California Cartwright Act;
- (n) Whether Qualcomm's UMTS Licensing Practices are unlawful and otherwise unfair, and thereby constitutes a violation of California's unfair competition law; and
- (o) Whether Plaintiff and the Device Class are entitled to relief, and the nature of such relief.

90. **Device Class Typicality.** Plaintiff's claims are typical of the claims of other Device Class members, as the wrongful conduct of Defendant threatens the Plaintiff and other Device Class members with the same injury and/or damages arising out of and based upon the same transactions, made uniformly to the Plaintiff and the public.

Allegations for Certification of Service Class Pursuant to Rule 23(a)

91. **Definition of the Service Class.** Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this Complaint against Defendant on behalf of himself and all persons who purchased cellular service from any carrier in the United States which bundles its

cellular service with subsidized UMTS-compliant devices (the "Service Class").

Excluded from the Service Class are Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents has a controlling interest and their current or former employees, officers and directors; and 3) the legal representatives, successors or assigns of any such excluded persons.

92. **Service Class Numerosity.** Joinder of all Service Class members is impracticable. In December 2005, the two largest GSM-based carriers collectively had roughly 76 million subscribers. *See Eleventh Report*, Table 4. Both these carriers subsidize their subscribers' purchase of UMTS devices, and the size of their subscriber base is sufficient for numerosity without considering any regional cellular carriers.

93. **Service Class Commonality.** Common questions of fact and law exist as to all Service Class members and predominate over the questions affecting only individual Class members. In addition to the common questions raised by the Device Class, these common questions include:

- (a) Whether the UMTS Licensing Practices' anticompetitive effects are passed on to cellular subscribers of carriers which subsidize their subscribers' purchase of UMTS devices;
- (b) What portion of prices for cellular service are attributable to Qualcomm's anticompetitive conduct alleged herein;
- (c) Whether Plaintiff and the Service Class are entitled to relief, and the nature of such relief.

94. **Service Class Typicality.** Plaintiff's claims are typical of the claims of other Service Class members, as the wrongful conduct of Defendant threatens the Plaintiff and other Service Class members with the same injury and/or damages arising out of and based upon the same transactions, made uniformly to the Plaintiff and the public.

Allegations Common to the Device Class and Service Class

95. **Adequate Representation.** Plaintiff will fairly and adequately represent and protect the interests of the other members of the Device and Service Classes, and has retained counsel competent and experienced in complex class actions. Plaintiff has no interest antagonistic to the members of either Class, and Defendant has no defenses unique to

1 Plaintiff.

2
3 96. **Predominance and Superiority.** This class action is appropriate for certification,
4 because class proceedings are superior to all other available methods for the fair and
5 efficient adjudication of this controversy. Joinder of all members of the Classes is
6 impracticable. The damages suffered by each individual member of the respective
7 Classes will likely be relatively small, especially given the burden and expense of
8 individual prosecution of the complex litigation necessitated by the actions of
9 Defendant. It would be virtually impossible for the Class or Subclass members
10 individually to obtain effective relief from the misconduct of Defendant. Even if
11 members of the Class or Subclass themselves could sustain such individual litigation, it
12 would still not be preferable to a class action, because individual litigation would
13 increase the delay and expense to all parties due to the complex legal and factual
14 controversies presented in this Complaint. By contrast, a class action presents far fewer
15 management difficulties and provides the benefits of single adjudication, economy of
16 scale, and comprehensive supervision by a single Court. Economies of time, effort, and
17 expense will be fostered and uniformity of decisions will be ensured.

18 97. **Policies Generally Applicable to the Classes.** This class action is also appropriate for
19 certification because Defendant has acted or refused to act on grounds generally
20 applicable to the members of both Classes, thereby making appropriate final injunctive
21 relief and/or corresponding declaratory relief with respect to the Classes as a whole. The
22 policies of the Defendant challenged herein apply and affect the Classes uniformly, and
23 Plaintiff's challenge of these policies hinges on Defendant's conduct, not on facts or law
24 applicable only to Plaintiff.

25 98. **Market Power.** Qualcomm acquired market power – the power to raise prices and
26 restrict output – in the Relevant Markets through the incorporation of its WCDMA
27 patents in the UMTS standard and the widespread adoption of the UMTS standard by
28 cellular carriers.

99. **Willful Acquisition of Monopoly Power Through Intentional Misrepresentation.**

1 Qualcomm acquired monopoly power by intentionally misrepresenting to the relevant
2 SDOs and their members that Qualcomm would license its WCDMA patents on fair,
3 reasonable, and non-discriminatory terms.

4 100. **SDOs' Adoption of UMTS Standard.** The UMTS standard was adopted in a
5 consensus-oriented, private standard-setting environment. Every relevant SDO and all of
6 their members relied on Qualcomm's intentional misrepresentations about its
7 commitment to license its WCDMA patents on FRAND terms.

8 101. **Qualcomm Reneged on its FRAND Commitments.** Qualcomm has reneged on its
9 commitments to licensing under FRAND terms. Qualcomm's UMTS Licensing is
10 unfair, unreasonable, and discriminatory – and has serious anticompetitive effects.

11 102. **Leveraging Monopoly Power.** Qualcomm exercises exclusive control over its 3G
12 CDMA-related patents, and derives significant market power over the market for 3G
13 CDMA devices from those patents. Qualcomm uses its market power over UMTS
14 devices and chipsets as a leverage to increase its market power over the entire 3G
15 cellular device market by deterring investment in the UMTS standard (or any other
16 possible alternative cellular standard) and driving investment into the 3G CDMA
17 standard.

18 103. **Causal Antitrust Injury.** Defendant's actions have injured Plaintiff and the Device and
19 Service Class members and threaten them with additional antitrust injury in the form of
20 more expensive UMTS cellular devices, reduced selection, and lessened non-price
21 competition. Plaintiff and the Class Members have sustained antitrust injuries from the
22 Defendant's actions in the form of increased costs for UMTS cellular devices than they
23 would have otherwise.

24 **Count I: Violation of the Sherman Act, 15 U.S.C. § 1**

25 104. Plaintiff incorporates the above allegations by reference.

26 105. Qualcomm committed to the relevant SDOs that it would license its WCDMA patents,
27 which are essential to the UMTS standard, on FRAND terms. This commitment was an
28 intentional misrepresentation.

- 1 106. The relevant SDOs and their members relied on Qualcomm's false commitment to
2 license its WCDMA patents essential to the UMTS standard, and adopted and
3 implemented the UMTS standard.
- 4 107. Qualcomm's UMTS Licensing constitutes a contract, combination in the form of trust or
5 otherwise in restraint of trade or commerce and violates Section 1 of the Sherman Act
6 (15 U.S.C. § 1). Qualcomm imposes the UMTS Licensing on its licensees through
7 deceptive and coercive conduct, and Qualcomm's licensees adhere to those restraints
8 involuntarily.
- 9 108. The UMTS Licensing has caused antitrust injury to Plaintiff and the other members of
10 the Device and Service Classes and threatens additional antitrust injury if it is allowed to
11 continue. This antitrust injury consists of supracompetitive prices (which are passed
12 down from Qualcomm's licensees to UMTS vendors, including cellular carriers, to end
13 consumers of UMTS devices and cellular services), as well as impaired non-price
14 competition in the form of deterred innovation.
- 15 109. Plaintiff, on his own behalf and on behalf of the members of the Device and Service
16 Class, seeks injunctive relief enjoining the UMTS Licensing Practices and other acts
17 alleged herein, and the cost of this suit, including reasonable attorneys' fees, under the
18 Clayton Act (15 U.S.C. § 26).

19
20 **Count II: Violation of the Sherman Act, 15 U.S.C. § 2**

- 21 110. Plaintiff incorporates the above allegations by reference.
- 22 111. Qualcomm committed to the relevant SDOs that it would license its WCDMA patents,
23 which are essential to the UMTS standard, on FRAND terms. This commitment was an
24 intentional misrepresentation.
- 25 112. The relevant SDOs and their members relied on Qualcomm's false commitment to
26 license its WCDMA patents essential to the UMTS standard, and adopted and
27 implemented the UMTS standard.
- 28 113. Through this intentional misrepresentation, Qualcomm willfully acquired monopoly
power over the Device Market.

1 114. Qualcomm's anticompetitive acts violate Section 2 of the Sherman Act (15 U.S.C. § 2).

2 115. In addition, Qualcomm has leveraged its monopoly power over UMTS devices and
3 chipsets to acquire monopoly power over the Alternate Device Market.

4 116. The investment required to adopt a particular cellular standard effectively prevents
5 cellular carriers from switching standards. Switching standards would be prohibitively
6 expensive for cellular carriers. Cellular carriers have adopted one of two 3G cellular
7 standards: UMTS or 3G CDMA.

8 117. Cellular devices that do not use cellular standards supported by the carriers cannot be
9 competitive (or economically successful), because their utility is nil or extremely
10 limited. The commercial reality is that 3G device and chipset manufacturers must use
11 either the UMTS standard or the 3G CDMA standard. Hence, if Qualcomm deters
12 investment by device and chipset manufacturers in the UMTS standard, it effectively
13 diverts investment into the 3G CDMA standard.

14 118. Qualcomm exercises exclusive control over the patents needed to use the UMTS
15 standard, and derives significant market power over the market for UMTS devices
16 through the incorporation of its WCDMA patents in the UMTS standard and the
17 widespread adoption of the UMTS standard by cellular carriers.

18 119. Qualcomm exercises exclusive control over the patents needed to use the 3G CDMA
19 standard, and derives significant market power over the market for 3G CDMA devices
20 from those patents. Qualcomm also derives significant revenue from its 3G CDMA-
21 related patents.

22 120. Qualcomm substantially controls the patent portfolio needed to manufacture 3G CDMA
23 devices. To the extent Qualcomm has the power to force cellular device and chipset
24 manufacturers to adopt the 3G CDMA standard, it is increasing its market power over
25 the Alternate Device Market.

26 121. Qualcomm's UMTS Licensing deters investment in the UMTS standard, and forces,
27 diverts, and induces investment in the 3G CDMA standard.

28 122. Qualcomm willfully acquired monopoly power over the entire Alternate Device Market

1 by leveraging its monopoly power over UMTS devices and chipsets through the UMTS
2 Licensing Practices. The UMTS Licensing Practices deter investment in the UMTS
3 standard (or any other possible alternative standard to the 3G CDMA standard) by
4 device and chipset manufacturers and divert investment into the 3G CDMA standard.

5 123. Qualcomm has caused antitrust injury to Plaintiff and the other members of the Device
6 and Service Classes and threatens additional antitrust injury if it is allowed to continue.
7 This antitrust injury consists of supracompetitive prices (which are passed down from
8 Qualcomm's licensees to UMTS vendors, including cellular carriers, to end consumers
9 of UMTS devices and cellular services), as well as impaired non-price competition in
10 the form of deterred innovation.

11 124. Plaintiff, on his own behalf and on behalf of the members of the Device and Service
12 Class, seeks injunctive relief enjoining the UMTS Licensing Practices and other acts
13 alleged herein, and the cost of this suit, including reasonable attorneys' fees, under the
14 Clayton Act (15 U.S.C. § 26).

15 **Count III: Violation of California's Cartwright Act,**
16 **Cal. Bus. & Prof. Code §§ 16720, 16726**

17 125. Plaintiff incorporates the above allegations by reference.

18 126. Through the UMTS Licensing, Qualcomm and its various licensees formed a
19 combination of capital, skill and/or acts by two or more persons for the purpose of
20 creating restrictions and preventing competition in manufacturing, making, sale and/or
21 purchase of UMTS devices. Qualcomm used (and continues to use) coercive and
22 deceptive tactics to impose restraints upon otherwise uncooperative licensees, and
23 procured (and continues to procure) the unwilling cooperation of these licensees through
24 threats and intimidation. The UMTS Licensing therefore creates a trust prohibited by
25 California's Cartwright Act (Cal. Bus. & Prof. Code §§ 16720, 16726).

26 127. In addition or in the alternative to the foregoing allegations, the UMTS Licensing
27 Practices constitute a trust in violation of the Cartwright Act, even if Qualcomm's
28 commitment to FRAND licensing was not intentionally false at the time it was made and

1 Qualcomm created a trust by simply reneging on its commitment to FRAND licensing
2 for the UMTS patents and engaging in the UMTS Licensing Practices.

3 128. The UMTS Licensing has caused antitrust injury to Plaintiff and the other members of
4 the Device and Service Classes and threatens additional antitrust injury if it is allowed to
5 continue. This antitrust injury consists of damages from supracompetitive prices (which
6 are passed down from Qualcomm's licensees to UMTS vendors, including cellular
7 carriers, to end consumers of UMTS devices and cellular services), as well as impaired
8 non-price competition in the form of deterred innovation.

9 129. Plaintiff, on his own behalf and on behalf of the other Device and Service Class
10 members, seeks treble damages (with interest), injunctive relief enjoining the UMTS
11 Licensing Practices and other acts alleged herein, and the cost of this suit, including
12 reasonable attorneys' fees, under the Cartwright Act (Cal. Bus. & Prof. Code § 16750).

13 **Count IV: Violation of California's Unfair Competition Law,**
14 **Cal. Bus. & Prof. Code § 17200**

15 130. Plaintiff incorporates the above allegations by reference.

16 131. Qualcomm's UMTS Licensing Practices, as alleged above, are unlawful business acts or
17 practices.

18 132. The UMTS Licensing Practices are unfair business acts or practices. In addition or in the
19 alternative to the foregoing allegations, the UMTS Licensing Practices are unfair or
20 deceptive business acts or practices even if Qualcomm's commitment to FRAND
21 licensing was not intentionally false at the time it was made and Qualcomm committed
22 an unfair or deceptive business act or practice by simply reneging on its commitment to
23 FRAND licensing for the UMTS patents.

24 133. The UMTS Licensing has damaged Plaintiff and the other members of the Device and
25 Service Classes and threatens damage if it is allowed to continue. This damage consists
26 of supracompetitive prices (which are passed down from Qualcomm's licensees to
27 UMTS vendors, including cellular carriers, to end consumers of UMTS devices and
28 cellular services), as well as impaired non-price competition in the form of deterred

1 innovation.

2 134. Plaintiff, on his own behalf and on behalf of the members of the Device and Service
3 Classes, seeks injunctive relief, including restitution of all supracompetitive fees, under
4 California's unfair competition law (Cal. Bus. & Prof. Code § 17203).

5 WHEREFORE, Plaintiff prays that the Court enter judgment and orders in their favor
6 and against Defendant as follows:

- 7 (a) Certifying the action as a class action and designating Plaintiff and his
8 counsel as representatives of the Device Class and the Service Class;
- 9 (b) With respect to Count III, treble damages in an amount to be determined
10 at trial against Qualcomm and in favor of the Device Class and the
11 Service Class;
- 12 (c) With respect to Counts I, II, III, and IV an injunction against further
13 anticompetitive acts, and the costs of the suit, including reasonable
14 attorneys' fees, against Qualcomm and in favor of the Device Class and
15 the Service Class;
- 16 (d) With respect to Count IV, equitable relief including an accounting, a
17 constructive trust and restitution, in an amount to be determined at trial,
18 and attorneys' fees, against Qualcomm and in favor of the Injunctive
19 Class;
- 20 (e) Awarding pre- and post-judgment interest; and
- 21 (f) Granting such other and further relief as the Court may deem just and
22 proper.

23 JURY TRIAL DEMAND

24 The Plaintiff hereby demands a trial by jury of all issues so triable.

25 Dated: April 9, 2007

26 By: 

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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Jessica Meyer

(b) County of Residence of First Listed Plaintiff Alameda
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Alan Himmelfarb, KamberEdelson LLC, 2757 Leonis Blvd., Los Angeles, CA 90058, (323) 585-8696

DEFENDANTS

QUALCOMM Incorporated

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
County of Residence of First Listed Defendant San Diego
(U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 26

Brief description of cause:
Antitrust violation

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Rudi Brewster

DOCKET NUMBER 05cv1958

DATE

04/09/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

144633

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

See 4/10/08

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

149633 - SH

**April 10, 2008
15:56:05**

Civ Fil Non-Pris

USAO #.: 08CV0655

Judge.: WILLIAM Q HAYES

Amount.: \$350.00 CK

Check#.: BC3015552

Total-> \$350.00

FROM: MEYER V. QUALCOMM